IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1744 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNIL VINODRAI DOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1744 of 2001
NANAVATY ADVOCATES for Petitioner No. 1
MR MANISH DAGLI, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/05/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 in respect of land bearing Survey Nos. 14 and 15 Part admeasuring 10590 sq.mts. in Rajkot.

2. The facts leading to filing of this petition, broadly stated, are as under:-

2.1 Form No.I under sub-section (1) of Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as `the Act') came to be filed by Shri Vinod N. Doshi, as the Executor of the estate of Shri N.J. Doshi in respect of the land admeasuring 12090 sq.mts. in L.S. No.14 and 15 (Annexure A) in village Vavdi of Rajkot District consisting of different plots. The description of the land was given in Annexure "A" to the Form. In column Nos. 13 and 14 of the said Form, the following particulars were given:-

Nature of interest in the land in such lands and the nature of such interest	Name and address of other persons, if any, having interest
13	14
Deceased Sunil V. Doshi, was owner Block 51-A, of the Jaldarshan, plots 444, Napeansea Road Bombay - 400 006.	He is sole beneficiary under the will of late Nathalal J. Doshi. The probate for the same is already obtained on 11-8-1968.

In Annexure "I" to the Form, particulars of land desired to be retained were given in the following terms:-

Survey No. and Sub-division No. or other identification number given for revenue purposes	Extent in hectares and square meters	Whether mortgaged to Government or Co-operative Societies or other bodies or Corporation as security for loan
6	7	8
L.S. No.14 & 15		No

Plot No. 14	857	sq.yds.	716 Sq.mtrs.
Plot No. 17	880	"	735 "
			1451 "

Balance area from Plot No. 15 & 16 adjoining line of Plot No. 14 & 17	49	"
	1500	"

2.2 The Form was processed by the competent authority under the Act and notice dated 28.2.1982 (Annexure "C") under Section 8(3) of the Act was issued by the competent authority calling upon Shri Vinod N Doshi to file objections to the draft statement. No objections were lodged to the draft statement and, therefore, the competent authority passed order dated 15/21.6.1982 (Annexure "D") stating that since no objections were received to the draft statement, the same shall be treated as final statement under Section 9 of the Act. Thereafter, the notification under Section 10(1) of the Act was issued on 7.8.1982 which was published in the Government gazette on 26.8.1982 (Annexure I to the reply affidavit). Thereafter, the notification under Section 10(3) of the Act was issued on 13.9.1982 which was published in the Government gazette on 21.12.1982 (Annexure II to the reply affidavit). The notification under Section 10(5) of the Act was issued on 7.10.1983 (Annexure III to the reply affidavit) which was served upon the declarant. The award under Section 11 of the Act was issued on 19.11.1983 (Annexure V to the reply affidavit). Shri Vinod N Doshi (the present petitioner's father) filed Special Civil Application No. 594 of 1984 and challenged the aforesaid proceedings.

2.3 By notice dated 10.1.1984 (Annexure VI to the reply affidavit), the competent authority called upon the declarant to hand over possession of the excess vacant land. Present petitioner Sunil Vinodrai Doshi informed the competent authority vide telegram dated 20.1.1984 that the petition is still pending before the Hon'ble Court; therefore, the possession cannot be taken due to subjudice matter; that Mr Vinodrai (petitioner's father) is not available.

2.4 In the aforesaid petition, initially notice was issued and ad-interim relief was granted to the extent that the competent authority under the ULC Act shall not

part with the possession of the land in question till further orders. That order was passed on 14.2.1984. Thereafter on 19.3.1984, this Court admitted the petition and continued the ad-interim relief after recording statement of the learned Government Solicitor that pursuant to a notice under Section 10(5) of the Act, the possession was already taken over. Ultimately on 20.6.1995, the petition came to be dismissed for default. Rule was discharged and the ad-interim relief was vacated.

2.5 Thereafter the present petitioner filed this petition on 5.3.2001 for challenging the proceedings under the ULC Act, 1976.

3. The petitioner has contended that the land in question originally belonged to the petitioner's grand-father Shri N.J. Joshi who had executed a registered will in favour of the petitioner. The grand-father expired and a probate was granted in 1968. Hence, the petitioner became the owner of the land in question. However, the petitioner's father kept the petitioner under the impression that the litigation under the Act is pending before this Court.

The challenge to the proceedings under the Act is levelled on the ground that the petitioner was the owner of the land in question and his name was also disclosed by the petitioner's father in column No. 13 of Form No. 1 and still the authorities took all the steps without issuing any notice to the petitioner and, therefore, those proceedings were in breach of the provisions of Section 8 read with Rule 5 of the Urban Land (Ceiling and Regulation) Rule, 1976. It is submitted that since the proceedings were null and void, the same are required to be set aside. The petitioner has, therefore, prayed for setting aside the impugned notices at Annexures "D", "E" and "F" to the petition under Sections 9, 10(5) and 11 of the Act.

4. In response to the notice issued by this Court, affidavit in reply has been filed by the Competent Authority (ULC) & Additional Collector (Co-ordination), Rajkot pointing out the action taken under various provisions of the ULC Act, 1876 and that the possession of the land in question was taken over long back and that the petitioner was aware of the proceedings in the past. It is further stated that the land in question is demanded by the Gujarat Housing Board for the housing scheme for the weaker sections of the people.

5. At the hearing of this petition, Mr ND Nanavati, learned counsel for the petitioner has submitted that since the petitioner's name was already disclosed in column No. 14 of the Statement in Form No. 1, finalization of the statement and the proceedings under the Act without issuing notice to the petitioner were in violation of the provisions of Section 8 read with Rule 5 of the Rules and, therefore, the proceedings were null and void and, therefore, for challenging the same, the question of delay would not arise. Strong reliance is also placed on the decision dated 20.11.1998 of this Court in Special Civil Application No. 4603 of 1997 wherein this Court remanded the matter to the competent authority for deciding the question afresh after hearing the declarant and the person whose name was disclosed in column No. 14 of the Form under Section 6(1) of the Act.

Mr Nanavati for the petitioner has also submitted in the alternative that the respondents may be directed to consider the case of the petitioner for atleast 1500 sq.mtrs. as a separate unit.

6. On the other hand, Mr Manish Dagli, learned AGP for the respondents has vehemently opposed the petition on the ground that the petition is filed after gross delay. It is submitted that the petitioner was well aware of the proceedings pending under the ULC Act in respect of this very land and that the petitioner now wants to take advantage of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 after gross delay in levelling the challenge contained in the present petition.

It is further submitted that the Form was filed by Shri Vinod N Doshi as the executor of the estate of N.J. Doshi and 1500 sq.mtrs of land as described in Annexure I to Form No. I was also granted to the declarant. If there is any inter se dispute between the petitioner and his father Shri Vinod N Doshi, the respondents have no concern with the same. The petitioner had already attained the age of majority on the date of coming into force of the ULC Act of 1976. Even if Form No. 1 was filed by the petitioner himself as the sole legatee under the will of Shri NJ Doshi instead of Shri Vinod N Doshi (as the executor of N.J. Doshi), the petitioner would have been allowed to hold only 1500 sq.mtrs. and the petitioner as well as the executor of the estate of the petitioner's grandfather would not have got two separate units of 1500 sq.mtrs. of land.

7. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the submissions made by the learned AGP. The proceedings under the ULC Act were finalized as far back as in 1984. The possession of the land was also taken over in 1984. In any case, after the interim relief was vacated by this Court in 1995, the respondents had taken over possession of the land on 30.3.1996 (Annexure IX to the reply affidavit). The fact that the petitioner himself had sent the telegram dated 20.1.1984 informing the authorities that a petition was pending before the High Court and the possession cannot be taken due to the matter being subjudice, is not disputed. The petitioner who was born on 4.9.1957 and was, therefore, a major on the date of coming into force of the ULC Act as well as on the aforesaid date of sending telegram is also not in dispute.

8. Apart from the fact that the gross delay in filing the present petition has not been explained on facts, even otherwise such delay is not required to be condoned for the following reasons :-

(i) If the petitioner had come out with the present objections at the relevant time in 1984 or even in 1996, the authorities could have considered the objections and dealt with the same when the Urban Land (Ceiling & Regulation) Act, 1976 was in force. The petitioner wants those proceedings to be set aside so that once the entire proceedings are set aside, the petitioner can claim the benefit of the ULC Repeal Act, 1999. Allowing the petitioner to take advantage of his own delay would, therefore, work to the prejudice of the respondent authorities which cannot be permitted. This fact situation is sufficient to distinguish the present case from the one in Special Civil Application No.4603 of 1997, the decision which is relied upon by the petitioner.

(ii) The Form was filed by petitioner's father Shri Vinod N Doshi as the executor of the estate of N.J. Doshi and the petitioner's father had specifically disclosed in column No. 14 of the Form that petitioner Sunil V Doshi was the sole beneficiary of the land in question. The land retained within the permissible limit of 1500 sq.mtrs. is out of those very lands which belonged to Shri NJ Doshi till his death before 1968. It is, therefore, not the case of the petitioner that the petitioner's father had

retained 1500 sq.mts. of land belonging to the petitioner's father-Shri Vinod N Doshi in his individual capacity and that if the petitioner had been given an opportunity, the petitioner would have filled in another Form and would have got another 1500 sq.mtrs of land. In view of the fact that Shri Vinod N Doshi, as the executor of the estate of N.J. Doshi, has retained 1500 sq.mtrs. of land out of the same lands over which the petitioner has made a claim, there was no question of giving two units, one to Shri Vinod N Doshi as the executor of the estate of N.J. Doshi and another to the present petitioner because the land in question and the land permitted to be retained belonged to the same person. Merely because the petitioner and his father might have been involved in some dispute (as is sought to be explained in the rejoinder affidavit), cannot be a ground for quashing and setting aside the proceedings under the ULC Act. If at all the petitioner and his father have any dispute, it is for them to have such dispute adjudicated before the competent forum in respect of the land retained by Shri Vinod N Doshi as the executor of the estate of N.J. Doshi. The petitioner cannot now be permitted to lay hands on the remaining land which was declared as excess vacant land as per the notification which was issued by the competent authority in the year 1984, and the possession of which was taken over by the authorities long before filing of the present petition.

(iii) As per the settled legal position, even when an order is alleged to be null and void, the proceedings for such declaration are required to be initiated within reasonable time (vide the decisions of the Apex Court in State of Punjab vs. Gurudev Singh, AIR 1992 SC 111 and State of Rajasthan vs. D.R. Laxmi & Ors., 1996 (6) SCC 445)

8. The petition is, therefore, summarily dismissed with no order as to costs.

(M.S. Shah, J.)

sundar/-